

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE: COMMERCIAL MONEY
CENTER, INC., EQUIPMENT
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CASE NO. 1:02cv16000 (MDL Docket)

JUDGE KATHLEEN M. O'MALLEY

MAGISTRATE JUDGE VECCHIARELLI

ORDER

On October 18, 2007, four of the sureties in this MDL case, SafeCo Insurance Company of America ("SafeCo"), RLI Insurance Company ("RLI"), Royal Indemnity Company ("Royal") and American Motorists Insurance Company ("Kemper/AMICO") (collectively, "the Sureties"), filed a motion for a protective order (Doc. No. 2126) in accordance with this Court's October 2, 2007 Order (Doc. No. 2120). The motion relates to a discovery request from four banks, hereinafter referred to as the SafeCo Claimant Banks,¹ to SafeCo and its forensic accounting expert, Michael R. Huhn, C.P.A. ("Huhn"). The SafeCo Claimant Banks requested SafeCo and Huhn to "produce all documents that Huhn received, obtained, generated, reviewed, considered and/or relied upon in connection with his retention as SafeCo's forensic accounting expert." (See Doc. No. 2118.) SafeCo has withheld production on the basis of privileges being asserted by it, as well as by the three other sureties.

¹The four SafeCo Claimant Banks are J.P. Morgan Chase Bank, N.A. successor to Bank One ("Chase"), Netbank, FSB ("Netbank"), The Provident Bank ("Provident"), and CadleRock Joint Venture, L.P. ("CadleRock").

The Court is in the processes of reviewing the parties' briefs. Among other arguments, the Sureties assert the following: (1) documents in Huhn's file that reveal attorney client communications or attorney work-product are protected from disclosure under the common interest or joint defense rule and (2) SafeCo's designation of Huhn as a testifying expert does not waive the privileges held by the other members of the surety common interest group as to confidential communications exchanged while within the group. (Doc. No. 2126 at 6, 9.) In support of their argument that SafeCo's designation of Huhn as a testifying expert does not waive the privileges held by RLI, Royal, and Kemper/Amico, the Sureties indicate that they entered into a "joint information sharing agreement" on May 8, 2002. (Doc. No. 2126.) The Sureties have not submitted a copy of the agreement, however, as they claim it is a privileged communication. (See Doc. No. 2126, attachment #2, Decl. of Ronald W. Hopkins.) The terms of the agreement are relevant to a thorough analysis of the issues raised by the Sureties. Therefore, the Sureties are ordered to submit the May 8, 2002 agreement *in camera* no later than January 29, 2008.

IT IS SO ORDERED.

s/ Nancy A. Vecchiarelli
United States Magistrate Judge

Date: January 25, 2008